

HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

ROBERT J. THOMAS, in his capacity as  
Shareholder Representative on behalf of the  
shareholders of Legal Systems Holding  
Company, a Delaware Corporation,

Plaintiff,

v.

WILLIAM JAMES DEL BIAGGIO, III, a  
California resident, on behalf of his residual  
interest as General Partner of SAND HILL  
CAPITAL II, LP, a Delaware Limited  
Partnership; R. TODD NEILSON, in his  
capacity as Bankruptcy Trustee for William  
James Del Biaggio III, a California resident;  
THOMVEST HOLDINGS, LLC, a Delaware  
limited liability company; and DOES 1-10

Defendants.

No. 11-cv-00361 RSL

ANSWER OF R. TODD NEILSON AS  
TRUSTEE TO CROSS-CLAIM AND  
THIRD-PARTY CLAIMS FILED BY  
THOMVEST HOLDINGS, LLC

ANSWER OF R. TODD NEILSON AS TRUSTEE TO  
CROSS-CLAIM AND THIRD-PARTY CLAIMS FILED BY  
THOMVEST HOLDINGS LLC  
(Cause No. 11-cv-00361-RSL) – Page 1

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Facsimile (206) 292-2104

1	THOMVEST HOLDINGS LLC, a Delaware
2	limited liability company,
3	
4	Cross-Plaintiff,
5	
6	v.
7	
8	WILLIAM JAMES DEL BIAGGIO, III, a
9	California resident, on behalf of his residual
10	interest as General Partner of SAND HILL
11	CAPITAL II, LP, a Delaware Limited
12	Partnership; and R. TODD NEILSON, in his
13	capacity as Bankruptcy Trustee for William
14	James Del Biaggio III, a California resident,
15	
16	Cross-Defendants.
17	
18	THOMVEST HOLDINGS LLC, a Delaware
19	limited liability company,
20	
21	Third-Party
	Plaintiff,
	v.
	SAND HILL CAPITAL HOLDINGS, INC., a
	Delaware Corporation
	Third-Party
	Defendant.

R. Todd Neilson (the “Trustee”), solely in his capacity as the chapter 11 trustee for the bankruptcy estate of William James Del Biaggio, III, in Case No. 08-30991 pending in the United States Bankruptcy Court for the Northern District of California, San Francisco Division (the “Bankruptcy Court”), and in such capacity as the sole shareholder of Sand Hill Capital Holdings, Inc. (“Holdings”), hereby answers the allegations in the Cross-Claim and Third-Party Claims<sup>1</sup> asserted by Thomvest Holdings

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<sup>1</sup> All capitalized terms not defined herein shall have the meanings set forth in the Cross-Claim and Third-Party Claims.

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LLC (“Thomvest”), as follows:

**ANSWER TO CROSS-CLAIM AND THIRD-PARTY CLAIMS**

**NATURE OF THE ACTION**

1. The Trustee admits that Legal Systems filed the instant interpleader action to resolve who is entitled to the Warrant and the proceeds thereof. Except as so admitted, the Trustee lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Cross-Claim and Third-Party Claims and on that ground denies the same.

2. The Trustee admits that, prior to November 30, 2007, Thomvest held a security interest in the assets of Holdings and that Holdings was indebted to Thomvest pursuant to a certain promissory note in the amount of \$10 million. The Trustee further admits that the Warrant was not listed in the agreement that transferred certain specified assets of Holdings to Thomvest. Except as so admitted, the Trustee lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Cross-Claim and Third-Party Claims and on that ground denies the same.

3. The Trustee admits that Thomvest seeks a declaration as described in paragraph 3 of the Cross-Claim and Third-Party Claims.

4. The Trustee admits that Thomvest seeks a declaration as described in paragraph 4 of the Cross-Claim and Third-Party Claims.

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5. The Trustee admits that Thomvest seeks a declaration as described in paragraph 5 of the Cross-Claim and Third-Party Claims.

## PARTIES

6. The Trustee lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the Cross-Claim and Third-Party Claims and on that ground denies the same.

7. The Trustee admits the allegations in paragraph 7 of the Cross-Claim and Third-Party Claims.

8. The Trustee admits that he is the duly appointed and acting trustee of Del Biaggio's bankruptcy estate. The Trustee denies that he is a resident and citizen of California.

9. The Trustee admits the allegations in paragraph 9 of the Cross-Claim and Third-Party Claims.

## **JURISDICTION AND VENUE**

10. The Trustee admits that the amount in controversy exceeds \$75,000, exclusive of interest and costs. Except as so admitted, the Trustee lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the Cross-Claim and Third-Party Claims and on that ground denies the same.

11. The Trustee admits, on information and belief, that the disputed funds are held in the registry of this Court. Except as so admitted, the Trustee lacks

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1 knowledge or information sufficient to form a belief as to the truth of the allegations  
 2 contained in paragraph 11 of the Cross-Claim and Third-Party Claims and on that  
 3 ground denies the same. The Trustee seeks to transfer venue of this proceeding to the  
 4 Northern District of California.

### 5 **STATEMENT OF FACTS**

#### 6 **Thomvest's Interest in Holdings**

7 12. The Trustee lacks knowledge or information sufficient to form a belief as  
 8 to the truth of the allegations in paragraph 12 of the Cross-Claim and Third-Party  
 9 Claims and on that ground denies the same.

10 13. The Trustee lacks knowledge or information sufficient to form a belief as  
 11 to the truth of the allegations in paragraph 13 of the Cross-Claim and Third-Party  
 12 Claims and on that ground denies the same.

#### 13 **Holdings, the Funds and Legal Systems**

14 14. The Trustee admits the allegations in paragraph 14 of the Cross-Claim  
 15 and Third-Party Claims.

16 15. The Trustee admits that Holdings was indebted to First Bank and that  
 17 Thomvest's loan to Holdings was subordinated to First Bank's loan to Holdings and the  
 18 Funds. Except as so admitted, the Trustee lacks knowledge or information sufficient to  
 19 form a belief as to the truth of the allegations in paragraph 15 of the Cross-Claim and  
 20 Third-Party Claims and on that ground denies the same.

21  
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1           16.     The Trustee admits that SHC II, L.P. loaned money to Legal Systems  
 2 and that certain warrants were issued in exchange for such loans. Except as otherwise  
 3 admitted, the Trustee lacks knowledge or information sufficient to form a belief as to  
 4 the truth of the allegations in paragraph 16 of the Cross-Claim and Third-Party Claims  
 5 and on that ground denies the same.

6           17.     The Trustee admits that SHC II, L.P. obtained an interest in the Warrant.  
 7 Except as otherwise admitted, the Trustee lacks knowledge or information sufficient to  
 8 form a belief as to the truth of the allegations in paragraph 17 of the Cross-Claim and  
 9 Third-Party Claims and on that ground denies the same.

10   **Holdings Defaults on the First Bank Loan but Repays That Obligation in Full**

11           18.     The Trustee lacks knowledge or information sufficient to form a belief as  
 12 to the truth of the allegations in paragraph 18 of the Cross-Claim and Third-Party  
 13 Claims and on that ground denies the same.

14           19.     The Trustee lacks knowledge or information sufficient to form a belief as  
 15 to the truth of the allegations in paragraph 19 of the Cross-Claim and Third-Party  
 16 Claims and on that ground denies the same.

17           20.     The Trustee, on information and belief, admits the allegations in  
 18 paragraph 20 of the Cross-Claim and Third-Party Claims.

19           21.     The Trustee, on information and belief, admits the allegations in  
 20 paragraph 21 of the Cross-Claim and Third-Party Claims.

21  
 ANSWER OF R. TODD NEILSON AS TRUSTEE TO  
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22. The Trustee, on information and belief, admits the allegations in paragraph 22 of the Cross-Claim and Third-Party Claims.

23. The Trustee admits that, prior to November 30, 2007, Holdings owed Thomvest the sum of \$10 million pursuant to a certain promissory note. Except as otherwise admitted, the Trustee lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 23 of the Cross-Claim and Third-Party Claims and on that ground denies the same.

**The Stock Purchase and Sale Agreement Between Sand Hill Capital Holdings and Thomvest**

24. The Trustee lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 24 of the Cross-Claim and Third-Party Claims and on that ground denies the same.

25. The Trustee denies the allegations in paragraph 25 of the Cross-Claim and Third-Party Claims.

26. The Trustee admits that Thomvest and Holdings entered into a Stock Purchase and Sale Agreement, dated November 30, 2007, pursuant to which \$788,015.08 of Holdings' indebtedness to Thomvest was forgiven and the balance of the debt in the amount of \$9,211,984.92 was converted to equity in Holdings. Except as otherwise admitted, the Trustee lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 26 of the Cross-Claim and Third-Party Claims and on that ground denies the same.

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1           27.     The Trustee denies the allegations in paragraph 27 of the Cross-Claim  
2 and Third-Party Claims.

3           28.     The Trustee admits the allegations in paragraph 28 of the Cross-Claim  
4 and Third-Party Claims, except that the purchase price for the shares in Holdings was  
5 open to adjustment through November 30, 2008.

6     **Del Biaggio's Bankruptcy**

7           29.     The Trustee admits the allegations in paragraph 29 of the Cross-Claim  
8 and Third-Party Claims.

9           30.     The Trustee admits that Del Biaggio listed between 50 and 99 creditors  
10 and between \$50 million and \$100 million in debts in his bankruptcy petition. The  
11 Trustee further admits that Del Biaggio pled guilty to a crime and is currently serving an  
12 eight-year federal prison sentence. Except as otherwise admitted, the Trustee lacks  
13 knowledge or information sufficient to form a belief as to the truth of the allegations in  
14 paragraph 30 of the Cross-Claim and Third-Party Claims and on that ground denies the  
15 same.

16                   **FIRST CLAIM FOR RELIEF – REFORMATION**

17                           **(Against Holdings)**

18           31.     The Trustee repeats and realleges each and every response to paragraphs  
19 1 through 30 of the Cross-Claim and Third-Party Claims as if fully set forth herein.

20           32.     The Trustee denies the allegations in paragraph 32 of the Cross-Claim  
21 and Third-Party Claims.

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1           33.     The Trustee denies the allegations in paragraph 33 of the Cross-Claim  
2 and Third-Party Claims.

3           34.     The Trustee denies the allegations in paragraph 34 of the Cross-Claim  
4 and Third-Party Claims.

5           35.     The Trustee lacks knowledge or information sufficient to form a belief as  
6 to the truth of the allegations in paragraph 35 of the Cross-Claim and Third-Party  
7 Claims and on that ground denies the same.

8           36.     The Trustee denies the allegations in paragraph 36 of the Cross-Claim  
9 and Third-Party Claims.

10          37.     The Trustee denies the allegations in paragraph 37 of the Cross-Claim  
11 and Third-Party Claims.

12          38.     The Trustee admits that Thomvest seeks the relief described in paragraph  
13 38 of the Cross-Claim and Third-Party Claims.

14                   **SECOND CLAIM FOR RELIEF – DECLARATORY RELIEF**

15                           **(Against All Third-Party and Cross-Defendants)**

16          39.     The Trustee repeats and realleges each and every response to paragraphs  
17 1 through 38 of the Cross-Claim and Third-Party Claims as if fully set forth herein.

18          40.     The Trustee denies the allegations in paragraph 40 of the Cross-Claim  
19 and Third-Party Claims.

20          41.     The Trustee admits that Thomvest seeks a declaration as described in  
21 paragraph 41 of the Cross-Claim and Third-Party Claims.

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**FIRST AFFIRMATIVE DEFENSE****(Inconvenient Venue)**

The Cross-Claim and Third-Party Claims, and each purported cause of action against the Trustee and Holdings set forth therein, should be transferred to the Northern District of California (and referred to the Bankruptcy Court) as a more convenient forum and in the interest of justice pursuant to 28 U.S.C. §§ 1404(a), 1412.

**SECOND AFFIRMATIVE DEFENSE****(Violation of Automatic Stay)**

To the extent that Thomvest exercises rights against the proceeds of the Warrant that constitute property of Del Biaggio's estate, such conduct is null and void absent relief from the automatic stay in Del Biaggio's bankruptcy case pursuant to 11 U.S.C. § 362.

**THIRD AFFIRMATIVE DEFENSE****(Trustee's Statement of Claim to Funds in Dispute)**

The Trustee incorporates herein the allegations in his Statement of Claim to Funds in Dispute, as set forth in the Trustee's Answer to the Complaint filed by Plaintiff Robert J. Thomas.

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**FOURTH AFFIRMATIVE DEFENSE**

**(Reservation of Right to Supplement)**

The Trustee reserves the right to amend this Answer and assert such additional defenses as might be discovered following further investigation of the matters set forth in the Cross-Claim and Third-Party Claims.

**REQUEST FOR RELIEF**

WHEREFORE, the Trustee, on behalf of Del Biaggio's bankruptcy estate and its sole interest in Holdings, prays for the following relief:

1. A determination that Thomvest recover nothing by way of the Cross-Claim and Third-Party Claims.
2. An order directing that the entirety of the proceeds of the Warrant be distributed to the Trustee, on behalf of Del Biaggio's estate; and
3. For such other and further relief as the Court deems just and proper.

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1 DATED this 8<sup>th</sup> day of June, 2011.

2  
3 BUSH STROUT & KORNFIELD LLP

4  
5 By /s/ Gayle E. Bush  
6 Gayle E. Bush, WSBA #07318  
Bridget G. Morgan, WSBA #43623

7 PACHULSKI STANG ZIEHL & JONES LLP

8  
9 By /s/ Maxim B. Litvak  
10 Maxim B. Litvak, CA Bar #215852  
11 150 California St., 15th Fl.  
San Francisco, CA 94111-4500  
Phone: (415) 263-7000

12 Attorneys for Defendant, R. Todd Neilson, solely in his  
13 capacity as Trustee of the estate of William Del Biaggio,  
14 III, and in such capacity as the sole shareholder of Sand  
Hill Capital Holdings, Inc.

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21  
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**CERTIFICATE OF SERVICE**

VIVIAN BRAXTON declares as follows:

I hereby certify that on the 8<sup>th</sup> day of June, 2011, I caused the foregoing ANSWER OF R. TODD NEILSON AS TRUSTEE TO CROSS-CLAIM AND THIRD-PARTY CLAIMS FILED BY THOMVEST HOLDINGS, LLC ("Answer") to be electronically filed using the CM/ECF system which will send notification of such filing to the following persons:

Attorneys for Plaintiff:

Charles Christian Sipos  
Michael Haldon Himes  
PERKINS COIE  
1201 Third Avenue, Suite 4800  
SEATTLE, WA 98101-3099  
[MHimes@perkinscoie.com](mailto:MHimes@perkinscoie.com)  
[CSipos@perkinscoie.com](mailto:CSipos@perkinscoie.com)

That on the 8<sup>th</sup> day of June, 2011, I caused copies of the Answer to be mailed, via first-class mail, postage prepaid and sent by facsimile to the following parties:

Counsel for Defendant, Cross-Plaintiff and Third-Party Plaintiff, Thomvest Holdings, LLC:

Ragesh K. Tangri                      Facsimile: (415) 236-6300  
Johanna Calabria  
DURIE TANGRI LLP  
217 Leidesdorff Street  
San Francisco, CA 94111

Peter J. Benvenuti                      Facsimile: (415) 875-5700  
JONES DAY  
555 California Street  
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Counsel for the Official Committee of Unsecured Creditors:

Michael H. Ahrens Facsimile: (415) 434-3947  
SHEPPARD, MULLIN,  
RICHTER and HAMPTON LLP  
4 Embarcadero Center 17<sup>th</sup> Fl.  
San Francisco, CA 94111

I declare under penalty of perjury under the laws of the state of Washington that the foregoing Proof of Service is true and correct.

DATED at Seattle, Washington, this 8<sup>th</sup> day of June, 2011.

/s/ Vivian Braxton  
Vivian Braxton, assistant to Bridget G.  
Morgan, WSBA #43623

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